

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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INTEGRATED COMMUNICATIONS &
TECHNOLOGIES, INC., et al.,

Plaintiffs,

v.

HEWLETT-PACKARD FINANCIAL SERVICES
COMPANY, et al.,

Defendants.

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Civil Action No.
1:16-cv-10386-LTS

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

MOTION HEARING

Wednesday, February 10, 2021
3:33 p.m.

John J. Moakley United States Courthouse
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
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P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is February 10th, the case of Integrated Communications v. Hewlett Packard Financial Service, civil action 16-10386, will now appear before this Court.

Counsel, please identify themselves for the record.

MR. NIKAS: Good afternoon, Your Honor, Luke Nikas from Quinn Emanuel. And I'm here with my associated, Alex Zuckerman, on behalf of the plaintiffs.

THE COURT: Good afternoon.

MR. BUNIS: Your Honor, Michael Bunis on behalf of the defendants. And with me are Mark Edgerton and Kevin Quigley from Choate Hall.

MR. SASO: And Your Honor, Paul Saso from Gibbons, PC, on behalf of the defendants. And also with me from Gibbons is Anthony Callaghan.

THE COURT: Okay. Good afternoon.

MR. EDGARTON: Good afternoon.

THE COURT: So I thought I would -- I scheduled this status conference. I thought it would be useful to sort of cut to the chase on certain issues that seemed to be dividing the parties and to keep the case moving on track.

1 Because if one thing is not clear in this case, I think it's
2 clear to all of you, but is that I very much intend to keep
3 this case on track for the trial that I scheduled.

4 So I thought I'd just run through and make some
5 observations about each -- I think there are four issues that
6 are raised, touched upon in the parties' filings, and recent
7 filings, either the motion filed by the defendant -- by the
8 plaintiffs, rather, or the request for a status conference
9 and response by the parties. So -- and ordering not
10 representing anything in particular, I'll address them first,
11 talking about the expert report. So -- okay.

12 So just to summarize, the -- under the schedule
13 that we have, the plaintiffs were to make medical expert
14 disclosures on January 29th, and they made a medical expert
15 disclosure of a doctor's report. I know I've read the
16 e-mails that you submitted back between the parties. I know
17 there's some dissatisfaction by the defendants with that
18 report. So let me sort of step back and make these general
19 observations of the case, and then I'll talk about that.

20 This is the lens through which I'm viewing the case
21 here as follows: The case was brought in 2016. It had a
22 phased process that was agreed upon -- proposed by the
23 parties, both parties, and agreed upon by the Court. That
24 phased process involved paper discovery, once we are done
25 with the motion to dismiss practice, on all issues.

1 When we were done with paper discovery, there was
2 going to be summary judgment on the narrow question of
3 whether the goods sold were counterfeit or not when sold.
4 Then after that, there would be deposition discovery and then
5 experts, and then quite possibly another summary judgment
6 round on other issues, other than the counterfeit.

7 That was the proposal. That was the plan. That
8 was what was executed. That was what was memorialized
9 unambiguously by me in writing, the orders that I issued in
10 the summer of 2020, which made clear that paper discovery was
11 over, that all discovery was over, except discovery that the
12 Court specifically authorized. And so there were various
13 depositions, and there were depositions just for the
14 defendant because the plaintiff hadn't asked for any. But
15 then the plaintiff, late, asked for them, and the Court
16 authorized, by and large, the depositions that the plaintiff
17 asked for.

18 So that schedule was going along. We had a trial
19 date that the schedule was built around. New counsel came
20 in, which was you, Mr. Nikas, and the other people from your
21 firm.

22 And after -- as I see it, after you were in the
23 case for a little while, the plaintiffs' counsel and defense
24 counsel came to the Court with a -- what seemed to be a
25 carefully thought-out proposal for revising the schedule.

1 The proposal provided -- did not provide for going back, for
2 redoing anything. It provided for some additional time to
3 complete the depositions that were then in process, and it
4 provided for a carefully crafted schedule for experts,
5 medical experts, the Rule 35 examinations, the nonmedical
6 experts, summary judgment, and then trial.

7 Each of those things related to each other, among
8 other things, as I think I observed in one of the orders,
9 that the defendants wanted the expert reports for their
10 summary judgment motion. This was the less common case where
11 even damage experts might reasonably bear on summary judgment
12 motions.

13 I spent a fair bit of time talking to counsel about
14 the schedule. I had two status conferences before, and I
15 issued a written order in response to the joint request to
16 adopt this revised schedule.

17 I did adopt this schedule. I adopted it exactly as
18 you proposed, with all the dates you proposed, adding only to
19 it a specific date for trial at the end, accounting for both
20 a prompt, but reasonable, period of time for me to resolve
21 the summary judgment motion, and some additional time after
22 that for you all to make all the necessary pretrial findings.

23 So I come to that with that tightly integrated and
24 crafted schedule that I very much intend to adhere to. I
25 have no plans other than your trial, for the time that I

1 scheduled this case for trial in February 2022, and I do not
2 intend to schedule any other cases for trial at that time.
3 I'm not double-booking this case. This is the only case on
4 for trial at that time and it's my intention to try the case
5 at that time, unless for some reason summary judgment
6 resolved it, or something else. But I'm planning and
7 anticipating, and that's what we do.

8 So then that brings me back to the medical expert
9 report. Defendants -- I'm sorry, plaintiffs, in their
10 e-mails, point out or contend that this is -- that the report
11 that they produced does comply with the requirements of
12 disclosure under the federal rules of civil procedure, and I
13 think facially I agree with that. I know that's not fully
14 joined, but when I read the report, it's a report that
15 contains an opinion; the opinion, among others, that,
16 generally, incarceration, especially of an innocent person,
17 can cause physical and emotional harm to people. That's an
18 opinion. And it's an opinion that has an articulated basis
19 in it that there are reasons that the expert explained for
20 this opinion, and there are the reasons for it.

21 The expert explained his credentials -- and I think
22 it's a him. And in any event, the expert explained the
23 credentials and the reasoning. And I don't say that to mean
24 to say that if it were a challenge under *Daubert* or something
25 else, that I would necessarily reject it, but on first

1 glance, it doesn't seem like it facially meets the dots of
2 Rule 26.

3 That said, there are two other things that are
4 quite obvious about that report, both of which -- and credit
5 to the expert, he's quite candid about. First, he doesn't
6 really render any opinions about the damages suffered by the
7 individual plaintiffs; that he says that he's going to
8 interview and examine them, and he's going to administer --
9 consider administering a range of evaluation -- of
10 psychological tests and measures on them, after which he's
11 likely -- what seems obvious, whether it's expressly stated
12 or not in the report, he's likely to render additional
13 opinions about these people and with additional reasons for
14 those opinions about those people.

15 So I'm not -- I guess the way I think about this is
16 this. The doctor can do whatever the doctor wishes to do.
17 He can interview any people he wants to. I'm not issuing an
18 injunction against this doctor, preventing him from doing
19 anything he wants to do. He can interview people. He can
20 render reports. He can do this case. He can work on -- he
21 can talk to the counsel for plaintiffs in this case about
22 whatever he wants. He can talk to -- he can do other cases.
23 It's a free country. He can do whatever he wants.

24 But from my perspective, the report that he issued
25 that the plaintiffs timely served on January 29th, that's the

1 report that's their expert report that triggers the next
2 things in the schedule. This is a -- this is a carefully
3 crafted schedule that, with each piece of the schedule
4 integrated with all the other components, the components that
5 came before and the components that come after, it's a
6 schedule that reasonably provides sufficient time for
7 everyone to accomplish what they need to accomplish at each
8 stage. That's determined -- all of you weighed in on that,
9 because it's the schedule that you proposed; and after
10 careful and searching examination, based upon my extensive
11 knowledge of the case and my experience, I concurred and I
12 adopted.

13 And so that's what is the schedule -- that is the
14 report I think, Mr. Bunis, to which triggers the next thing.

15 Now, there is another issue, which is that it seems
16 quite likely that this expert might choose to issue another
17 report. Nothing stops him from writing whatever he wants to
18 write. But I will tell you that I'm -- that that report is
19 not before me and that report is not in the case, because the
20 deadline was January 29th. The report was served. That's
21 the report that's in the case as the expert report for the
22 plaintiffs. That deadline was clear. That deadline was
23 established well after -- not a long time, but well after the
24 experienced plaintiffs' counsel came into the case,
25 presumably after having a sufficient time to evaluate the

1 case, consider. They crafted a schedule after negotiation
2 with the defendants. I infer that that schedule was -- what
3 was considered was all the things that needed to go into that
4 schedule, needed to be done.

5 Nobody came to me for a continuance beforehand. No
6 one has asked me for a continuance now. And -- or no
7 continuance was asked for in response to the status report
8 raising these things. So that's the report. That's the
9 report to which you respond. That triggers each of the next
10 stages of things that we're going to do in the case, and we
11 move forward from there.

12 If the plaintiffs decide that they get a report
13 from their expert and they want that report to be the report
14 in this case, then you need to make a motion to the Court to
15 explain to me why that report should be the motion -- should
16 be the report in the case. And you'll -- I'm confident, if
17 you think that such a motion is warranted, you'll make it.

18 But I have to tell you, I'm disinclined -- you told
19 me that there would be no continuances. I took that to mean
20 that you carefully considered the case and the schedule, and
21 all that was entailed, and that we wouldn't need to do that.
22 And so I'm not precluding anything, because there's no motion
23 to preclude anything and there's nothing to preclude at the
24 moment. I'm telling you my perspective about the case and
25 the schedule.

1 So I should say, related to that, I come to the
2 second point, which is supplement --

3 The plaintiffs made supplemental disclosures on --
4 was it on January 29th, I think. Is that right?

5 MR. NIKAS: Yes, Your Honor.

6 THE COURT: January 29th, which was the last day of
7 fact discovery as the -- and that, too, the defendants have,
8 in general, I think it would be fair to say, complained
9 about, with respect to the fact that those supplemental
10 disclosures identify certain people as people with knowledge
11 who weren't previously identified by the plaintiffs in the
12 case.

13 I think that the defendants are correct that at
14 this point they haven't offered these people as witnesses at
15 trial; they haven't offered them -- affidavits from them in
16 opposition to the motion for summary judgment; that you have
17 an ongoing duty to supplement, and they feel that those are
18 the people, after their careful review of the case, that they
19 decided were people that they needed to disclose in order
20 to discharge their duty under the rules to supplement. And
21 that's fine.

22 But what I do observe about this case is what all
23 of the observations I made about the expert with respect to
24 the schedule applies here equally. And so I'm not barring
25 anybody from supplementing their disclosures, and I'm not

1 barring, at the moment, anybody. But again, people who were
2 disclosed at the end of the day, on the last day of fact
3 discovery as new witnesses, in this context that I've
4 described, I'm -- you know, I'm disinclined to think that
5 it's fair to allow them to submit affidavits or testify at
6 trial. I'm not precluding them. If a motion is made to --

7 There was a reference to having them be deposed --
8 well, you could just depose them now. So no, that's not
9 really correct for the following reasons. One, there are no
10 depositions in this case without prior court permission.
11 That was established and settled in this case in the summer
12 of 2020, at least, if not earlier. It was reiterated then.
13 The reason for that was because this case needs to come to
14 resolution and go to trial, and so the Court is supervising
15 the discovery to be sure that this case actually reaches
16 trial. And it will reach trial.

17 And the reason I adjusted the schedule in response
18 to the appearance of new counsel was both counsel made
19 reasonable arguments to the Court that -- not that anything
20 that was done needed to be redone; no one suggested that.
21 The schedule didn't call for that and I did not authorize
22 that, but rather that the things that were left that remained
23 to be done would be better done and fairer to the plaintiffs
24 and fairer to the defendants if there was a little bit more
25 time allowed for each of those things, so that they could be

1 done well and right, especially -- and the parties persuaded
2 me that simultaneous, for example, summary judgment -- doing
3 summary judgment simultaneously with experts wasn't
4 appropriate in this case for reasons I've already referred
5 to.

6 So I'm -- so if a motion is filed to me, why those
7 were late and what should be authorized about them or not, am
8 I going to read it? Of course. Am I going to consider it
9 fairly and carefully? Of course. But I think you all need
10 to understand that this was a carefully crafted, integrated
11 schedule that no one asked me and -- to reopen anything that
12 happened. It was a schedule to address only those things
13 that were left. We're not going -- no one is asking me to go
14 back, and I am disinclined to go back and redo anything,
15 especially when this sort of structure of the case was, in my
16 mind, set long ago, and then which was that we would do all
17 the paper discovery and then sort of this bifurcated summary
18 judgment process with depositions and so forth occurring in
19 between. So that's my view on the new, if you will, people
20 disclosed.

21 That leads to a third point, which is defendant
22 served written discovery at the end of -- the end of
23 December -- I'm sorry, I have that wrong. The plaintiff
24 served additional written discovery the end of December, the
25 document requests, interrogatories, at least. I'm not sure

1 if there was anything else. As I understand the status of
2 that, the defendants objected to that, pointed to, among
3 other things, my orders, Docket No. 372, referring to no
4 further discovery, except as authorized by the Court, in a
5 prior order, which said the paper written discovery was done.
6 And that, as far as I know, nothing further has happened with
7 respect to that discovery at this point.

8 Defendants correctly point out that they haven't
9 moved to compel, and there's nothing before the Court with
10 respect to that. And I think that's an accurate statement.
11 They have -- I have the complaint of the defendants, but
12 there's no -- there's -- they haven't come to me --

13 I'm sorry, I'm getting the plaintiffs and the
14 defendants mixed up. Let me start over.

15 The plaintiffs are correct in pointing out that
16 there's no motion to compel pending before me, they haven't
17 filed one, and that all that's before me is defendants'
18 request for status conference, in which they worry or
19 anticipate that such a motion to compel might be filed.

20 And so I will tell you, even though it's not before
21 me in the sense of a joined motion with respect to the
22 discovery, the reason that I bring it up here is twofold.
23 One is, I don't think you can serve, in this case, written
24 discovery at this stage of the case, or at any point since
25 you've entered the case, the lawyers at Quinn Emanuel,

1 because I previously believe -- I believe I ordered that all
2 written discovery was over and no discovery could occur other
3 than that which I authorized, which is the deposition that we
4 talked about and the experts that are coming.

5 So I think that if -- so from my perspective, I
6 guess for the defendants, you don't need to respond to that
7 request, because that request was not a proper request in
8 this case.

9 If to you, Mr. Nikas, to the extent you think you
10 want to have written discovery, you think that written
11 discovery is appropriate in the case, then what you need to
12 do is file a motion with the Court for leave to serve the
13 written discovery, explaining to me what it is, the discovery
14 you want, why that, notwithstanding the schedule, and what
15 have you, you think that whatever it is that you're seeking
16 to be appropriate, and then I would look at that and I would
17 carefully consider it.

18 That leads me to the last issue, which is the
19 Rule 35, the location of the Rule 35 medical examinations.
20 So just to recap, that had been in the offing for a long
21 time. At the moment, where it stood -- where it stands in
22 the most recent history is in the order that adjusted and
23 extended the schedule and set the trial in February of 2022,
24 I said that those Rule 35 examinations should happen in the
25 United States. The case was brought here, and they should

1 happen in person.

2 So the plaintiffs have filed a motion seeking
3 permission to have that, those Rule 35 examinations, proceed
4 by telemedicine or, in any event, to waive the requirement of
5 being in person. They point out, essentially, I think, three
6 issues with having them in the United States.

7 The first is that they say that in order to come to
8 the United States, obviously, the individuals who are in
9 China need a visa. And they say that although they applied
10 for a visa, it looks like in November, that it is -- that the
11 wait time is listed as 999 days from the US Embassy and that
12 that suggests -- and that the information coming out of the
13 Embassy is that only emergencies are being authorized, and
14 they just may not get a visa in time to comply with the
15 Rule 35 examination.

16 The second issue they point out is that they have
17 to leave China. There are exit requirements governing
18 leaving China.

19 The third issue is, then, of course, there's -- if
20 I have the rules right, that described by the plaintiffs,
21 there's a 14-day waiting period to come to the United States,
22 at the conclusion of which you need a negative PCR COVID test
23 within three days of flying here. So there's a risk that
24 they could get a visa, do what they need to do, they would be
25 all on track, and they might contract COVID while they're

1 doing the 14-day waiting period outside of China because the
2 14-day period doesn't apply to them while they're in China.
3 They have to be somewhere else to engage in the 14-day
4 waiting period.

5 So I have these -- these comments with respect to
6 that. One is, I think the defendants need to respond to that
7 motion. I think that the plaintiffs have raised reasonable
8 and fair issues with respect to the requirement to be in the
9 United States. Those -- I will note that -- well, so, yes, I
10 think those things, you need to respond to that motion
11 because I can't fully evaluate that without a response.
12 That's a pending motion before the Court.

13 While it's true that I said it had to happen in the
14 United States, they've raised for me facts that weren't --
15 some of those facts may have been swirling about or even in
16 some ways before me, but they've put them before me in a much
17 clearer way and I think that I need to consider those and I
18 want to hear from the defendants with respect to those.

19 I think particularly the question of getting a visa
20 is obviously a significant issue. They can't come to the
21 United States without a visa. And I'm not expecting them to
22 come to the United States in violation of the laws of the
23 United States, and so that's a significant thing.

24 I will tell you, just aside, it wasn't crystal
25 clear to me that the document you attached as the Chinese

1 exit requirements prohibits -- or treats foreign litigation
2 as a nonessential activity. But even if they can leave
3 China, they still need a visa.

4 And there's the other issue. So I do think that
5 there are two separate questions raised by the motion, one is
6 coming to the United States, and one is in-person
7 evaluations. And you sought both, which is fine. And I
8 highlight that, because I think about them, depending on what
9 defendants tell me, I might think about those things
10 differently.

11 I can see -- one thing, there are -- telemedicine
12 existed before COVID, and as you point out in the papers, has
13 become widespread since and has been used quite successfully
14 in a variety of ways. And that, you know, certainly is facts
15 that you've put before the Court, the plaintiffs. That said,
16 there are certain things that are -- that telemedicine isn't
17 as effective at as in-person examinations.

18 And so I separate those two, because I can see the
19 potential for in-person examinations, even if they didn't
20 happen in the United States. But of course an in-person
21 examination outside of the United States involves all sorts
22 of expense issues and terms. You have to send the expert to
23 wherever the sort of, quote, neutral country or the third
24 country is that you can do it, or you might have to find an
25 expert in that county. That could be problematic.

1 So I think that what I would say about that motion
2 is this: I think that there are -- notwithstanding the
3 statements I made, there are -- seem to be, at least facially
4 from reading just one side's papers, there seem to be real
5 questions about the ability of these plaintiffs to come to
6 the United States, and that's an issue. And I'm not going
7 to -- if they -- if they are diligent in attempting to come
8 to the United States, I'm not going to dismiss their claims
9 or bar certain damages, because they didn't violate the --
10 they didn't -- they didn't hire someone from Massachusetts to
11 stuff them into a box, as has been alleged in another case,
12 and secret them inside a train and then on a private jet and
13 land them in the United States for an in-person examination,
14 in violation of all sorts of international and United States
15 laws. I'm not expecting that the plaintiffs do that in order
16 to comply with my order. In fact, I would be unhappy if they
17 did that to seemingly comply with my order. So those are --
18 like that's an issue.

19 On the other hand, I think that it's -- the reason
20 that I said "in-person" was because I thought this was the
21 kind of case where in-person is important. And you know,
22 what am I going to do when I see what the defendants say? I
23 don't know. I want to see what they say. That's why we have
24 an adversary process, because I hear both sides and then I
25 might want to talk to you again.

1 What I'm really saying, I guess, counsel for the
2 defendants, is they raised a real issue with respect to
3 getting out of the -- China and into the United States, and I
4 need you to respond in order to evaluate that.

5 And one of the points I was trying to make in my
6 order about coming to the United States was that they did
7 bring the case here. They are going to have to come here for
8 the trial, and I think they're going to have to be here for
9 the trial.

10 And another thing you should consider, while it's
11 true we have authority to have you all by Zoom now, I don't
12 believe I had authority, prior to the CARES Act, which was
13 enacted in the weeks following the onset of the COVID
14 pandemic back in March of 2020 -- I don't think I had
15 authority to conduct proceedings by Zoom. So they -- it is a
16 civil case, not a criminal case. We ought to think about
17 that. That's why I said they will have to come to the United
18 States. And so obviously Rule 35 is not the trial, but so
19 there are practical issues there. I need a response from the
20 defendants with respect to that issue.

21 But to recap, from my perspective where we are, the
22 written discovery served by the plaintiffs in December 29th,
23 that's a nullity. If you want to serve written discovery,
24 you need to file a motion for leave to serve written
25 discovery. The only discovery -- at this point, there's no

1 discovery, except the Rule 35 process and the expert -- the
2 remaining expert disclosures and expert depositions. I think
3 any other discovery, other than supplementing, as your duties
4 ordinarily require, requires permission.

5 The expert report that was served is the expert
6 report that defendant -- plaintiffs and their counsel served.
7 That's their expert report. That's the one the defendants
8 respond to. That's the one that's in the case. If you want
9 to have another expert report and supplement, you're going to
10 have to come and file the motion and explain to me why you
11 should be allowed to file it late. And I'll read that motion
12 and consider it. But the one thing we're not going to do,
13 just so that there's no misunderstanding is, like --

14 Well, is it true that -- it doesn't really matter.
15 I won't ask that.

16 But the fact of the matter is that you came into
17 the case in November. In December, you filed a motion, and
18 the motion was to change the remaining schedule. I don't
19 view this as an opportunity -- you may like everything
20 Mr. Joffe did, or you may not like everything Mr. Joffe did;
21 you may like some of what he did, or some of what he didn't
22 do. There are some cases where it might be appropriate to go
23 back and redo things. But this is an old case with
24 substantial litigation; I didn't think it was appropriate at
25 the time to do it *sua sponte*. You didn't ask for that. You

1 asked for just changing what remained. That's what we're
2 doing.

3 We have a definite trial date, which itself is a
4 substantial extension in an old case from what was a definite
5 trial date. I intend to stick to that trial date. I think
6 it makes sense. I think there's a public interest in
7 resolving this case and that trial date. No one has given me
8 any reason why I should continue it. I can't -- I'm not
9 saying never, because one should never say never, but short
10 of that, I don't see any reason I'm changing the trial date.
11 We're going forward with this carefully, tightly integrated
12 schedule. If you want to do something different, file a
13 motion.

14 Any questions about that?

15 MR. SASO: Your Honor, this is Paul Saso for
16 Gibbons. I have just one, I think, logistical question for
17 you.

18 With respect to the plaintiffs' motion to permit
19 remote medical exams, that was filed about a week and a half
20 ago, late, about 10:00 p.m. Friday afternoon, we want -- and
21 plaintiffs may very well assent to this, and I just have not
22 raised it with them yet. Our opposition would be due this
23 Friday. We wanted to hear from you first to see, since we
24 thought that this was already decided, whether you wanted
25 full briefing. And I would just see if Your Honor or the

1 plaintiffs would be okay with extending that to just simply
2 next Tuesday or Wednesday.

3 MR. NIKAS: Your Honor, we filed it two months in
4 advance, so we could get this all resolved in time, the issue
5 of remote. So I have no objection to an extension. This is,
6 of course, a question of whether Your Honor has enough time
7 to resolve these issues.

8 THE COURT: Yes, I'll be able to resolve it
9 quickly.

10 Tuesday or Wednesday, which would you want?

11 MR. SASO: I guess I'd always like Wednesday.

12 THE COURT: Close of business Wednesday.

13 I'll tell you what I'm interested in most. I'm
14 interested in like the questions -- I'm interested in the
15 practical questions. Okay. Can they get out of China and
16 come to the United States? And is that -- is that reasonably
17 possible or not? And if it's not reasonably possible and you
18 want me to hold them to coming to the United States when it's
19 not reasonably possible, you need to explain to me how that's
20 right. Or if -- because I can't see how that would be right.
21 Or if they're incorrect, in fact, it is reasonably possible
22 for them to come to the United States, then explain how. Or
23 you know, that's one question.

24 And the second is, like, what about the
25 telemedicine? And I understand why it might not be as good,

1 but -- and if they can't come to the United States, but they
2 can go somewhere else, do you want that? What about that?
3 And so the -- like in my mind, that's what I'm thinking of:
4 Can they come to the United States? If they can't come to
5 the United States -- they certainly can leave China; they're
6 not under any order to remain in China. Can they go
7 somewhere else and can you do your examination there? I
8 understand that's not ideal; it involves a lot of expense
9 and -- but could you or would you want that? Or can we do
10 telemedicine, or what do you think about that? Or is there
11 some other alternative that I haven't thought about?

12 That's why I want a response. Because they put an
13 issue in my mind, the question of whether they could really
14 get here. And they had applied, from their exhibit, before I
15 even issued my order in December and so -- for a visa. So
16 that's what I'm thinking about. And if you want to say other
17 things or more things, or other things that are appropriate,
18 I tell you in particular that's what I'm wondering about.

19 MR. SASO: No, Your Honor, I think that that's very
20 helpful in terms of guidance in terms of responding. We're
21 happy to show Your Honor that in fact the plaintiffs are
22 capable of traveling here and obtaining a US visa. The State
23 Department website that they cite to, if you simply look for
24 different cities where you can go in order to obtain or
25 schedule an interview, you can get that in far less than

1 999 days. They seem to have randomly selected cities like
2 Moscow and Mexico City, where apparently it is difficult.
3 But you could go to places like Hong Kong or Vietnam and get
4 an interview with the US Embassy in less than a week.

5 And the only other thing in terms of preview, Your
6 Honor, is that this issue is one that is not one that is no
7 fault of their own; this is an issue that was addressed over
8 a year ago, when we began to ask their plaintiffs' prior
9 counsel, Mr. Joffe, what steps have the overseas plaintiffs
10 taken to start the process of obtaining a visa, back in
11 November of 2019. We also brought the visa issue to Your
12 Honor's attention in February of 2020 and discussed it with
13 you at a conference on March 10th of 2020, where you
14 encouraged the plaintiffs to take all steps then necessary to
15 obtain those visas.

16 So it may be true that they first decided to do
17 that on November 6th of 2020, but that was when their -- the
18 then-current deadline to get to the United States for their
19 medical exams was November 13th. And so they decided to, for
20 the very first time, apply for a Chinese visa one week prior
21 to the deadline for them to arrive here. Now, we, you know,
22 sort of resurrected that possibility by adding
23 four-and-a-half additional months for them to get here,
24 through -- from November 13th to April 1st.

25 But I don't think that we should look at overseas

1 plaintiffs as having no fault in this process. We've been
2 persuing this for at least a few months with the plaintiffs.
3 They knew that they needed to apply for these visas, and they
4 simply decided not to.

5 THE COURT: I will look at all that. I'm not
6 weighing in on it. But that's why we have an adversary
7 process, and I will look at that and consider that and then
8 evaluate it.

9 What I would say -- since this might come up, I
10 will just short-circuit it. It's possible, plaintiffs, you
11 might want to file a reply. I don't know and -- but I could
12 imagine that you might want to. So you don't have to file --
13 if you want to file a reply to that motion, you don't have to
14 file a motion for leave to file a reply, you can just file a
15 reply, as long as the reply is five pages or less. If you
16 want more than five pages, then you need to come to me for
17 permission, because ordinarily a reply ought to be five pages
18 or less, especially on a motion like this.

19 And so I could -- do you think you're reasonably
20 likely, Mr. Nikas, to want to file a reply?

21 MR. NIKAS: I do, Your Honor. I think five pages
22 is certainly going to be enough, given what I just heard
23 Mr. Saso say. So I think five page is fine, and I won't ask
24 for leave but I would appreciate the opportunity.

25 THE COURT: So when -- why don't I set a deadline,

1 just so that then I won't decide the motion until I get the
2 reply, or once I --

3 How much time do you think you'll need to file a
4 reply? He's going to file his by close of business next
5 Wednesday.

6 MR. NIKAS: If I could file -- if he's going to
7 file the --

8 THE COURT: 6:00 p.m. Wednesday, he'll file.

9 MR. NIKAS: 6:00 p.m. on the 17th.

10 If I could have the 22nd, say by 6:00 p.m., as
11 well, Monday.

12 THE COURT: Monday. Okay. Fine. So reply by the
13 17th, and then Monday the --

14 MR. NIKAS: 22nd.

15 THE COURT: -- 22nd. Right. Okay. Monday the
16 22nd, close of business, for reply.

17 All right. Anything else?

18 MR. NIKAS: No. Thank you, Your Honor.

19 THE COURT: Okay. All right. Thank you very much.
20 Stay healthy. Have a good day. We're adjourned.

21 THE DEPUTY CLERK: This matter is adjourned.

22 (Court in recess at 4:10 p.m.)
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of February, 2021.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter